IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

CRL.A.No. 774 of 2000(D)

CC.90/1998 OF JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD.
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APPELLANT/COMPLAINANT:

BABU, S/O. KALOOR APPU, THALIKULAM VILLAGE,
DESOM, CHAVAKKAD TALUK, REPRESENTED BY
POWER OF ATTORNEY HOLDER DEVADAS,
S/O. KRISHNANKUTTY, CHAKKUMKERAM HOUSE,
ENGANDIYOOR AMSOM, DESOM,
P.O. ENGANDIYOOR, CHAVAKKAD TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.RAJIT.

RESPONDENT/ACCUSED:

DEVADAS, S/O. VENKITTAN,
MADAMPARAMBU MADAM, MALA,
P.O. MALA.

BY ADV. SRI.P.RAVINDRAN,
PUBLIC PROSECUTOR SRI. AMJAD ALI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.774 of 2000

Dated this the 12th day of September, 2007

JUDGMENT

The appellant is the complainant in C.C.No.90/98 in the file of Judicial First Class Magistrate Court, Chavakkad in the proceedings initiated under Section 138 of the Negotiable Instruments Act.

2. The prosecution case is that the accused had borrowed a sum of Rs.1,00,000/- on 20.5.1997 and issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was returned unclaimed.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 3 and Exts. P1 to P9.

4. PW1 is the power of attorney holder of the complainant who is the brother-in-law of the complainant. PW1 has testified as to the lending and execution of Ext. P1 cheque. PW1 has stated that he witnessed the complainant handing over the amount and the accused issuing a signed cheque but he does not know who

has written the other details in the cheque. The court below has found that there is no evidence as to prove the execution of the cheque. It is also observed that it was when the case filed by PW1 was pending that the amount involved in the present case was given which is unlikely. I find that the evidence of PW1 does not contained any such admission and the observation is really unwarranted. I find that the matter requires reconsideration. In view of the finding of the court below that there is no proper evidence as to the execution of the cheque.

5. In the circumstances, the findings of the court below is set aside. The matter is remitted back to the court below for enabling the complainant to adduce further evidence with regard to the execution of the cheque. The accused also shall be at liberty to adduce evidence. The case will be posted before the court below on 5.11.2007.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl